**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

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| In the Matter of | ) | |
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| Reporting Requirements for U.S. Providers of International Telecommunications Services | ) | IB Docket No. 04-112 |
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| Amendment of Part 43 of the Commission's Rules | ) | |
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To: The Commission

**JOINT COMMENTS OF SES AMERICOM, INC. AND PANAMSAT CORPORATION**

SES AMERICOM, Inc. ("SES AMERICOM") and PanAmSat Corporation ("PanAmSat"), by their attorneys, hereby submit these joint comments in response to the Notice of Proposed Rulemaking in the above-captioned proceeding, FCC 04-70 (rel. Apr. 12, 2004) (the "*Notice*"). The *Notice* proposes a number of changes to the international reporting requirements set forth in Sections 43.61 and 43.82 of the Commission's rules, 47 C.F.R. §§43.61 & 43.82. SES AMERICOM and PanAmSat support the Commission's objective of simplifying and clarifying the international reporting rules. However, we oppose any extension of the reporting requirements to non-common carrier fixed-satellite operators. For reasons that are discussed below, such an extension would impose new administrative burdens on satellite operators without providing any corresponding benefit.

**BACKGROUND**

SES AMERICOM and PanAmSat each operates a satellite fleet capable of providing service to and from almost any location in the world. In the early years of satellite regulation, the Commission distinguished between "domsats" and international separate systems.

The former were authorized to provide international services only if they were incidental to a domestic offering. The latter offered primarily international services and could provide domestic services in the U.S. only if they were ancillary to an international offering. SES AMERICOM (formerly GE American Communications, Inc.) was considered a domsat under this policy, while PanAmSat began as an international separate system, as did Columbia Communications Corp. ("Columbia"), which is now a wholly-owned subsidiary of SES AMERICOM. In 1996 the Commission erased these regulatory distinctions.[1] Since that time, SES AMERICOM, PanAmSat and all other U.S.-licensed satellite operators have been authorized to provide both domestic and international services.

SES AMERICOM and PanAmSat operate as non-common carriers. We offer satellite capacity to customers who employ that capacity to provide a broad range of services. In many instances, a customer will acquire the right to use the full capacity of one or more transponders for a multi-year period. The customer typically uses its own earth stations to transmit to and receive signals from the transponder. In such cases, the satellite operator has no involvement in, and frequently no knowledge of, the purpose for which the customer uses the satellite capacity or any subsequent changes in the customer's uses.

The overwhelming majority of both the international and domestic traffic carried on today's satellite systems is video and data. While satellites once carried a significant amount of international voice traffic, satellites' role in the voice market has shrunk substantially, and only a small fraction of voice traffic is now carried over satellites. To the extent international voice traffic is provided via satellite, it is provided not by the satellite operators themselves, but

[1] *Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems,* 11 FCC Rcd 2429, 2430-31 (1996).

rather by common carriers that acquire capacity – usually bulk capacity – from the satellite operators pursuant to privately negotiated (*i.e.*, non-common carrier) arrangements.

The international reporting requirements that are the subject of the *Notice* currently apply only to common carriers.[2] As a result, neither SES AMERICOM nor PanAmSat is required to file international circuit-status or traffic and revenue reports today.[3] The *Notice*, however, expressly seeks comment on whether the obligation to file circuit-status reports should be extended to non-common carriers. *See Notice* at ¶ 60. Furthermore, even though there is no mention in the *Notice* of requiring non-common carriers to file international traffic and revenue reports, the language of the proposed rule would appear to subject all carriers to that requirement as well.[4]

For the reasons discussed herein, the Commission should not require non-common carrier satellite operators to submit international reports. SES AMERICOM and PanAmSat applaud the Commission for undertaking a thorough review of its international reporting rules and procedures. In particular, updating the reporting manuals and permitting information to be submitted in spreadsheet form are long-overdue improvements in the system. The *Notice* also contains proposals to eliminate unnecessary elements of the current reports to lessen the burden on carriers and increase the value of the information collected.

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[2] *See* 47 C.F.R. § 43.82(a) ("Each facilities-based common carrier engaged in providing international telecommunications service" must file annual circuit status report); § 43.61(a) ("Each common carrier engaged in providing international telecommunications service" must file annual traffic and revenue report).

[3] SES AMERICOM previously offered certain services as a common carrier and was authorized pursuant to Section 214 of the Communications Act to provide international common carrier services. As a consequence, SES AMERICOM has filed both international circuit-status and traffic and revenue reports in the past, and is familiar with the administrative burdens of preparing the reports.

[4] *See* proposed rule 43.61(a) ("Each carrier engaged in providing international telecommunications service" must file annual traffic and revenue report).

But subjecting non-common carrier satellite operators to new reporting requirements would have the opposite effect and cannot be reconciled with the objectives identified in the *Notice*. Instead, expanding the scope of the current requirements would impose new administrative burdens on satellite operators that are simply not justified by any corresponding benefit.

## I. NON-COMMON CARRIER SATELLITE OPERATORS SHOULD NOT BE REQUIRED TO FILE CIRCUIT-STATUS REPORTS

The *Notice* seeks comment on whether the scope of the circuit-status filing requirement should be expanded to non-common carriers in the context of pursuing ways to "make the information in the circuit-status reports more useful." *Notice* at ¶ 60. The Commission expresses concern that an increasing number of the submarine cable and satellite facilities used to provide international facilities are operated on a non-common carrier basis. *Id.* Because these entities are not subject to Section 43.82, the Commission observes that it lacks information regarding "circuits operated on a non-common carrier basis and their potential effect on the availability of circuits for common-carrier services." *Id.*

The Commission states that information regarding idle international circuits operated by non-common carriers "would be helpful in assessing the levels of unused capacity and the need for new cable facilities." *Id.* In addition, the Commission suggests that the information would be relevant to the analysis of "the potential capacity in a market" in the context of a merger or acquisition application. *Id.*

The rationale for changing the rule discussed in the *Notice* largely focuses on issues relating to international submarine cables, ignoring the differences between cables and

satellite systems that are used for international services.[5] Whatever the value might be of requiring operators of non-common carrier submarine cables to file circuit-status reports, the Commission must conclude that subjecting non-common carrier satellite operators to this filing requirement would *not* make the data collected any more useful.

First, the concept of idle international capacity cannot meaningfully be applied to satellite operators. In discussing the prospective benefits of extending the scope of the circuit-status report, the Commission focuses on the usefulness of information regarding idle capacity – *i.e.*, international capacity that is currently unused. The Commission indicates that in evaluating the need for a new undersea cable or the effect of a proposed transaction, it would be helpful to know whether significant levels of capacity in the relevant market are idle.

This suggestion is based on the assumption that idle capacity can be associated with a given route market, an assumption that is valid for undersea cables but not for satellite systems. An international cable is immovable, has a limited number of landing sites, and cannot be used for domestic services. In contrast, satellites are movable, can provide service anywhere within a vast footprint, and are typically used for a combination of U.S. domestic and international services, as well as wholly foreign services. As a result of these factors, it is impossible for a satellite operator to meaningfully assign any idle capacity on its system to a given international route market.

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[5] For example, the Commission notes that at the time the circuit status rule was adopted in 1995, codifying a requirement that had been imposed as part of the authorization process for international submarine cables (*Notice* at ¶ 11), "almost all submarine cables were common carrier facilities." *Id.* at ¶ 60. However, that was not the case for international satellite facilities. As noted above, in 1995, only separate systems were authorized to provide significant international satellite services, and all the separate systems (PanAmSat, Columbia, and Orion) operated as non-common carriers.

The Commission has expressly recognized this fundamental difference. The Commission's report on circuit-status data submitted for 2002 explained that:

> The calculation for total U.S. satellite available capacity is done differently from the calculation for total U.S. available cable capacity. Due to the flexible nature of satellite coverage, each satellite can cover various countries and can be available to all those countries within its footprint. Therefore, there is no accurate way to calculate the fixed amount of capacity that can be allocated to any given country at any specific time frame. On the other hand, fiber optic cables are fixed because they are deployed only to their planned cable stations, making it possible to calculate the total available cable capacity on a particular route at any given time frame.[6]

As noted above, SES AMERICOM filed circuit-status reports for a number of years because it was previously authorized to provide international common carrier services. However, each time, SES AMERICOM indicated that it had no idle circuits for purposes of the report. This statement reflects the fact that there is no basis pursuant to which SES AMERICOM could assign any unused capacity on its system to international service, much less to any specific international route.

The staff acknowledges this problem in its recommendations regarding revisions to the reporting rules. Specifically, the staff asks whether idle satellite capacity should be reported by country, and if so, how it would be allocated. *Notice*, Appendix C at ¶ 47. The reality, however, is that there is no rational way to perform such an allocation. Unused capacity on a satellite system cannot be assigned except by purely speculative and arbitrary means to any given international route-market.

As an example, if the Commission were evaluating the need for a new U.S.-Japan undersea cable or analyzing a proposed transaction's effect on the U.S.-Japan market, it might

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[6] *2002 Circuit Status Report* at 5 n.13

well be useful to consider information concerning the availability of idle capacity on existing U.S.-Japan cable facilities. In contrast, no purpose would be served by attempting to bring satellite capacity into the equation. A satellite capable of providing U.S.-Japan service might have idle capacity, but it would be capacity that could be just as easily used to provide domestic U.S. service, domestic Japan service, or service between two or more non-U.S. points. Furthermore, the satellite operator could seek authority to relocate the satellite to a different position altogether. Thus, there is no basis on which all or a portion of the unused capacity could be logically assigned specifically to the U.S.-Japan route.

The staff's recommendation suggests that as an alternative to country-specific allocation, idle satellite capacity could be reported on a regional or world total basis. *Id.* However, the Commission already collects information regarding each U.S.-licensed satellite operator's idle capacity on a per-satellite basis pursuant to Section 25.210(l) of the Commission's rules. To the extent that the Commission believes that the availability of idle satellite capacity is relevant in a particular proceeding, it can draw on this information as part of its analysis.

Second, continuing to exempt non-common carrier satellite operators from the requirement to file circuit-status reports will have little effect on the data collected by the Commission. As the *Notice* indicates, common carriers that use the capacity of non-common carrier satellite operators to provide international services are themselves required to report their active and idle circuits. *See Notice* at ¶ 60. Thus, the Commission will continue to have access to information regarding international common carrier offerings provided using satellite facilities. If anything, requiring that non-common carrier satellite operators file circuit-status reports could

generate confusion, and lead to less accurate information, because multiple parties could be filing reports covering the same circuits.

Furthermore, as noted above, the Commission already collects information regarding idle satellite capacity in the annual reports satellite operators must file. In addition, the Commission requires non-common carrier satellite operators to pay regulatory fees for international bearer circuits. As a result, the Commission obtains information annually regarding the total number of international bearer circuits provided by each satellite operator. Given these sources of information, there is no reason to subject non-common carrier satellite operators to another reporting requirement.

In any event, satellite operators typically are not aware of the uses to which their customers put the capacity they purchase, and thus would not be in a position to report on their customers' international operations. As discussed above, satellite operators typically act as wholesalers, providing bare transponder capacity on a long-term basis. A customer may disclose its intended use of capacity in the course of negotiating an agreement, but even then, the use of the satellite facility might change over time without the operator's knowledge. Or the satellite operator's customer might not plan to use the capacity at all – the buyer might instead be a reseller. Satellite operators will have access to the information required to report active international circuits only in the relatively rare instances where a satellite operator is providing an end-to-end international service.[7] The burden of imposing reporting requirements on satellite operators in these circumstances would far outweigh the benefit of having access to the limited data that operators could report.

[7] These instances represent a minuscule fraction of total international circuits. For example, SES AMERICOM reported 6468 worldwide circuits for 2002. In contrast, the *Notice* observes that in 2002 submarine cables accounted for more than 31 million circuits (*Notice* at n.71) – almost five thousand times SES AMERICOM's total reportable capacity.

Under these circumstances, the Commission should decline to extend the scope of the circuit-status filing requirement to non-common carrier satellite operators. In its review of the international filing requirements, the *Notice* indicates that the staff's intention was to "lessen the burdens placed on U.S. international carriers . . . while maintaining and enhancing the benefits that the reports provide." *Notice* at ¶ 16, *citing 2002 International Bureau Biennial Review Staff Report*, 18 FCC Rcd at 4232. Subjecting non-common carrier satellite operators to a new requirement to file circuit-status reports would run contrary to this objective.

## II. THE COMMISSION SHOULD MAKE CLEAR THAT NON-COMMON CARRIER SATELLITE OPERATORS ARE NOT REQUIRED TO FILE TRAFFIC AND REVENUE REPORTS

The Commission should clarify that it does not intend to broaden the scope of the annual traffic and revenue reporting requirement to encompass non-common carrier satellite operators. The *Notice* does not expressly propose extending the applicability of the rule or provide any rationale for doing so. However, the text of proposed Section 43.61(a) states that each "carrier" engaged in international telecommunications would be required to submit the traffic and revenue report, rather than each "common carrier," as provided in the current text of Section 43.61(a).

Clearly the Commission cannot adopt such a significant alteration in the scope of the rule without seeking comment on the advisability of the change. In any event, there is no justification for requiring non-common carrier satellite operators to file international traffic and revenue reports. As discussed above, satellite operators have access to only limited information regarding the international services provided by satellite users. Furthermore, satellites carry very little international voice traffic, to which the Commission's accounting-rate benchmark and international settlements policies apply, and in any case common carriers that use satellites to

provide international voice services file their own traffic and revenue reports. As a result, any data that could be provided by satellite operators would either be immaterial to the primary concerns underlying the reporting requirements[8] or redundant of information that is already reported to the Commission. For these reasons, and consistent with the objectives expressed in the *Notice*, the Commission should retain the existing language of Section 43.61 and require only international common carriers to file traffic and revenue reports.

## CONCLUSION

For the foregoing reasons, the Commission should decline to extend the current international reporting requirements to non-common carrier satellite operators.

Respectfully submitted,


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[8] SES AMERICOM, for example, reported $1.1 million in total international revenue for 2002, all of which was for private line services. This represents only 0.1% of private line revenues for that year, and only 0.01% of total international revenue. *See Notice* at ¶ 20 (2002 private line revenues were $988 million and represented about 11% of U.S. international revenue).